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MORTGAGE AND SECURITY AGREEMENT

BY

QUAIL 600 LIMITED PARTNERSHIP,

an Alabama limited partnership,

As Mortgagor

in favor of

METROPOLITAN LIFE INSURANCE COMPANY,

a New York corporation,

As Mortgagee

September 30, 1996

Inst # 1996-32641

10/02/1996-32641
01:31 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
038 MCD 3837.00

Inst # 1996-32641

CARABA Title

**MORTGAGE
AND
SECURITY AGREEMENT**

This MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made as of the 30th day of September, 1996, by **QUAIL 600 LIMITED PARTNERSHIP**, an Alabama limited partnership, having its principal place of business at 1200 Corporate Drive, Birmingham, Alabama 35242-2940 ("Mortgagor") in favor of **METROPOLITAN LIFE INSURANCE COMPANY**, a New York corporation, having its principal place of business at One Madison Avenue, New York, New York 10010 ("Mortgagee").

WITNESSETH:

WHEREAS, this Mortgage secures: (1) the full and punctual payment of the indebtedness evidenced by that certain Promissory Note (the "Note") of even date with this Mortgage, the final payment of which is due no later than the 1st day of October, 2003 (the "Maturity Date"), made by Mortgagor to the order of Mortgagee in the principal face amount of TWO MILLION SIX HUNDRED TWENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$2,625,000.00), with interest thereon at the rates therein provided; (2) the full and punctual payment of the indebtedness evidenced by that certain Promissory Note (Deed of Trust) dated August 15, 1994 (the "Original Quail Plaza Note") made by Quail Hollow Associates Limited Partnership ("Original Borrower") payable to the order of Hartford Life Insurance Company ("Original Lender") in the principal face amount of \$3,600,000.00, as endorsed by Original Lender to Mortgagee and as assigned by Original Borrower to Mortgagor and as assumed by Mortgagor pursuant to that certain Assignment and Assumption Agreement dated as of September 30, 1996 (the "Assignment and Assumption Agreement") and as amended and restated by that certain Amended and Restated Promissory Note dated of even date with this Mortgage (the "Restated Quail Plaza Note"), the final payment of which is due no later than the Maturity Date, made by Mortgagor to the order of Mortgagee in the principal face amount of FIVE MILLION ONE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$5,100,000.00), with interest thereon at the rates therein provided (the Original Quail Plaza Note and the Restated Quail Plaza Note are collectively referred to herein as, the "Quail Plaza Note"); (3) the full and punctual payment of the indebtedness evidenced by that certain Promissory Note (Deed of Trust) dated August 15, 1994 (the "Original Quail Commons Note") made by Original Borrower payable to the order of Original Lender in the principal face amount of \$2,750,000.00, as endorsed by Original Lender to Mortgagee and as assigned by Original Borrower to Mortgagor and as assumed by Mortgagor pursuant to the Assignment and Assumption Agreement and as amended and restated by that certain Amended and Restated Promissory Note dated of even date with this Mortgage (the "Restated Quail Commons Note"), the final payment of which is due no later than the Maturity Date, made by Mortgagor to the order of Mortgagee in the principal face amount of FOUR MILLION SEVEN HUNDRED TWENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$4,725,000.00), with interest thereon at the rates therein provided (the Original Quail Commons Note and the Restated Quail Commons Note are collectively referred to herein as, the "Quail Commons Note"); (the Note, the Quail Plaza Note and the Quail Commons Note are collectively referred to herein as, the "Quail 600 Notes"), together with any and all renewals,

modifications, consolidations and extensions of the indebtedness evidenced by the Quail 600 Notes or any one or more of the Quail 600 Notes, any and all additional advances made by Mortgagee to protect or preserve the Property (as hereinafter defined), any and all future advances as may be made by Mortgagee under the Quail 600 Notes and any other amounts required to be paid by Mortgagor under any of the Quail 600 Loan Documents (as hereinafter defined), such indebtedness, advances and amounts being hereinafter collectively referred to as the "Secured Indebtedness"; and (4) the full performance by Mortgagor of all of the provisions, agreements, covenants and obligations contained herein or in any of the other Quail 600 Loan Documents, specifically excluding that certain Unsecured Indemnity Agreement dated of even date herewith (the "Unsecured Indemnity Agreement"), executed by Mortgagor in favor of Mortgagee relating to the Property which is not secured by the Quail 600 Loan Documents. The Note, the other Quail 600 Notes, this Mortgage, the Deeds of Trust (as defined in the Note), that certain Assignment of Lessor's Interest in Leases dated of even date herewith (the "Assignment of Leases"), executed by Mortgagor in favor of Mortgagee, that certain Escrow and Security Agreement dated of even date herewith (the "Escrow Agreement"), executed by Mortgagor in favor of Mortgagee relating to the Property and any and all other documents evidencing, securing or relating to the Secured Indebtedness (specifically excluding the Unsecured Indemnity Agreement) and all renewals, modifications, consolidations, and extensions of such documents are hereinafter collectively referred to as the "Quail 600 Loan Documents."

NOW, THEREFORE, IN CONSIDERATION of the sum of ONE HUNDRED DOLLARS (\$100.00), in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the Secured Indebtedness and other obligations of Mortgagor set forth in this Mortgage and the other Quail 600 Loan Documents (specifically excluding the Unsecured Indemnity Agreement which is not secured by this Mortgage), Mortgagor does hereby bargain, sell, mortgage, transfer, grant, convey, assign and warrant to Mortgagee, its successors and assigns:

(A) All of Mortgagor's present and future estate, right, title and interest in and to that certain real property located in the County and State (as defined in Exhibit "A" attached hereto and made a part hereof) and as more particularly described in Exhibit "B" attached hereto and made a part hereof, together with all right, title, interest and estate of Mortgagor, in and to all easements, rights-of-way, gaps, strips and gores of land, streets, ways, alleys, sewers, sewer rights, waters, water courses, water rights, privileges, licenses, tenements, hereditaments and appurtenances whatsoever, in any way appertaining to said real property, whether now owned or hereafter acquired by Mortgagor, and the reversion(s), remainder(s), possession(s), claims and demands of Mortgagor in and to the same, and the rights of Mortgagor in and to the benefits of any conditions, covenants and restrictions now or hereafter affecting said real property (collectively, the "Land"), together with all estate, right, title and interest that Mortgagor now has or may hereafter acquire in:

(1) all things now or hereafter affixed to the Land, including all buildings, structures and improvements of every kind and description now or hereafter erected or placed thereon, any fixtures and any and all machinery, motors, elevators, boilers, equipment (including, without limitation, all equipment for the generation or distribution of air, water, heat, electricity, light, fuel or refrigeration or for ventilating or air conditioning purposes or for sanitary or drainage purposes or for

the removal of dust, refuse or garbage), partitions, appliances, furniture, furnishings, building service equipment, building materials, supplies, ranges, refrigerators, cabinets, laundry equipment, hotel, kitchen and restaurant equipment, computers and software, radios, televisions, awnings, window shades, venetian blinds, drapes and drapery rods and brackets, screens, carpeting and other floor coverings, lobby furnishings, games and recreational and swimming pool equipment, incinerators and other property of every kind and description now or hereafter placed, attached, fixed or installed in such buildings, structures, or improvements and all replacements, repairs, additions, accessions or substitutions or proceeds thereto or therefor; all of such things whether now or hereafter placed thereon being hereby declared to be real property and hereinafter collectively referred to as the "Improvements";

(2) all income, rents, royalties, revenue, issues, profits, proceeds and other benefits from any and all of the Land and/or Improvements, subject, however, to the right, power and authority hereinafter conferred upon Mortgagee or reserved to Mortgagor to collect and apply such income, rents, royalties, revenue, issues, profits, proceeds and other benefits;

(3) all deposits made with respect to the Land and/or Improvements, including, but not limited to, any security given to utility companies by Mortgagor, and all advance payments of insurance premiums made by Mortgagor with respect thereto and all claims or demands relating to such deposits, other security and/or such insurance;

(4) all damages, royalties and revenue of every kind, nature and description whatsoever that Mortgagor may be entitled to receive, either before or after any Event of Default (as hereinafter defined), from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Land, with the right in Mortgagee to receive and apply the same to the Secured Indebtedness;

(5) all proceeds and claims arising on account of any damage to, or Condemnation (as hereinafter defined) of, the Land and/or Improvements or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Land and/or Improvements;

(6) all licenses (including, but not limited to, any operating licenses or similar licenses), contracts, management contracts or agreements, guaranties, warranties, franchise agreements, permits, authorities or certificates required or relating to the ownership, use, operation or maintenance of the Land and/or Improvements; and

(7) all names under or by which the Land and/or Improvements may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, patents pending and goodwill relating to the Land and/or Improvements.

All of the property described in paragraph (A) above is hereinafter collectively referred to as the "Real Property."

(B) Mortgagor, its successors and assigns, as a secured party, a security interest in, Mortgagor's interest in, any portion of the Real Property which may be construed to be personal property and in all other personal property of every kind and description, whether now existing or hereafter acquired, now or at any time hereafter attached to, erected upon, situated in or upon, forming a part of, appurtenant to, used or useful in the construction or operation of or in connection with, or arising from the use or enjoyment of all or any portion of, or from any lease or agreement pertaining to, the Real Property, including:

(1) all water rights appurtenant to the Real Property together with all pumping plants, pipes, flumes and ditches, all rights to the use of water, all rights in ditches for irrigation, all water stock, shares of stock or other evidence of ownership of any part of the Real Property that is owned by Mortgagor in common with others and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Real Property;

(2) all plans and specifications prepared for construction of the Improvements and all studies, data and drawings related thereto; and all contracts and agreements of Mortgagor relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings, or to the construction of the Improvements;

(3) all equipment, machinery, fixtures, goods, accounts, general intangibles, documents, instruments and chattel paper;

(4) all substitutions and replacements of, and accessions and additions to, any of the foregoing;

(5) all sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into with respect to the sale to any purchasers of any part of the Real Property, together with all deposits and other proceeds of the sale thereof; and

(6) all proceeds of any of the foregoing, including, without limitation, proceeds of any voluntary or involuntary disposition or claim respecting any of the foregoing (pursuant to judgment, condemnation award or otherwise) and all goods, documents, general intangibles, chattel paper and accounts, wherever located, acquired with cash proceeds of any of the foregoing or proceeds thereof.

All of the property described in paragraph (B) above is hereinafter collectively referred to as the "Personal Property." All of the Real Property and the Personal Property is herein collectively referred to as the "Property."

TO HAVE AND TO HOLD the Property, for the benefit of Mortgagee, its successors and assigns, subject, however, to the terms, covenants and conditions contained herein.

PROVIDED, HOWEVER, if Mortgagor shall pay or cause to be paid to Mortgagee in full the Secured Indebtedness, at the times and in the manner stipulated in the Quail 600 Loan Documents, and shall keep, perform and observe all and singular the covenants and promises of Mortgagor in the Quail 600 Loan Documents, then this Mortgage and all the properties, interests and rights hereby granted, encumbered, transferred or assigned shall be released by Mortgagee in accordance with the laws of the State.

MORTGAGOR HEREBY COVENANTS AND AGREES FOR THE BENEFIT OF MORTGAGEE AS FOLLOWS:

ARTICLE I COVENANTS

1.01 PERFORMANCE BY MORTGAGOR. Mortgagor shall pay the Secured Indebtedness to Mortgagee and shall keep and perform each and every other obligation, covenant and agreement of the Quail 600 Loan Documents.

1.02 WARRANTY OF TITLE. Mortgagor warrants that it is lawfully seized of that portion of the Property which constitutes real property, that it holds marketable and indefeasible fee simple absolute title to same, and that it has good right and is lawfully authorized to sell, convey or encumber the Property subject only to those matters set forth in Exhibit "C" attached hereto and made a part hereof (the "Permitted Exceptions"). Mortgagor further covenants to warrant and forever defend all and singular the Property unto Mortgagee forever from and against all persons whomsoever claiming the same or any part thereof.

1.03 TAXES, LIENS AND OTHER CHARGES. Unless sums sufficient to pay the same shall have been fully paid to Mortgagee as provided in Section 1.06 hereof, Mortgagor shall pay all real estate and other taxes, assessments, water and sewer charges, vault and other license or permit fees, levies, fines, penalties, interest, impositions, and other similar claims, general and special, public and private, of any kind whatsoever which may be assessed, levied, confirmed, imposed upon or arise out of or become due and payable out of, or become a lien on or against the Property or any part thereof (all of the foregoing, together with utility and refuse removal charges, being hereinafter collectively referred to as the "Imposition(s)") not later than ten (10) days before the dates on which such Impositions would become delinquent. Not later than the date when any Impositions would become delinquent, Mortgagor shall produce to Mortgagee official receipts of the appropriate imposing authority, or other evidence reasonably satisfactory to Mortgagee evidencing the payment thereof in full. If Mortgagor shall in good faith, and by proper legal action, contest any Impositions, and shall have deposited cash with Mortgagee (or as Mortgagee may direct) as a reserve for the payment thereof plus all fines, interest, penalties and costs which may become due pending the determination of such contest, in such amount as Mortgagee may require, then Mortgagor shall not be required to pay the same during the maintenance of said deposit and as long as such contest operates to prevent enforcement or collection of such Impositions against, or the sale or forfeiture of, the Property for non-payment thereof, and is prosecuted with due diligence and continuity, and shall not have been terminated or discontinued adversely to Mortgagor. Upon termination of any such proceeding or contest, Mortgagor shall pay the

amount of such Impositions or part thereof as finally determined in such proceeding or contest. However, if monies have been deposited with Mortgagee pursuant to this Section 1.03, said funds shall be applied towards such payment and the excess, if any, shall be returned to Mortgagor.

1.04 FURTHER TAXES. In the event of the passage, after the date of this Mortgage, of any law deducting from the value of the Property, for the purposes of taxation, any lien thereon or security interest therein, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust and/or security agreements or debts secured by mortgages, deeds of trust and/or security agreements, or the manner of the collection of any such taxes, which has the effect of imposing payment of the whole or any portion of any taxes, assessments or other similar charges against the Property upon Mortgagee, the Secured Indebtedness shall immediately become due and payable at the option of Mortgagee; provided, however, that such election by Mortgagee shall be ineffective if prior to the due date thereof: (1) Mortgagor is permitted by law (including, without limitation, applicable interest rate laws) to, and actually does, pay such tax or the increased portion thereof (in addition to continuing to pay the Secured Indebtedness as and when due and payable) as and when due; and (2) Mortgagor agrees with Mortgagee in writing to pay, or reimburse Mortgagee for the payment of any such tax or increased portion thereof when thereafter levied or assessed against the Property or any portion thereof. Any money paid by Mortgagee under this Section 1.04 shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

1.05 INSURANCE.

(a) Mortgagor, at its sole cost and expense, shall at all times, unless otherwise indicated, provide, maintain and keep in force:

(1) property insurance covering the Improvements and Personal Property against loss or damage from such causes of loss as are embraced by insurance policies of the type now known as "All Risks" or "Open Perils" property insurance on a replacement cost basis with an Agreed Value Endorsement waiving co-insurance, all in an amount not less than one hundred percent (100%) of the then full replacement cost of the Improvements (exclusive of the cost of excavations, foundations and footings below the lowest basement floor) and Personal Property, without deduction for physical depreciation thereof. Such property insurance shall include a Demolition and Increased Cost of Construction Endorsement as well as such other insurance as Mortgagee may from time to time designate to cover other risks and hazards affecting the Property;

(2) business income insurance insuring against loss of business or rental income of the Property, in an amount equal to not less than one year's gross "business income" of the Property. "Business income" as used herein is defined as the sum of (i) the total anticipated gross income from occupancy of the Property as furnished and equipped by Mortgagor, (ii) the amount of all charges (such as, but not limited to, operating expenses, insurance premiums and taxes) which are the legal obligation of tenants or occupants to Mortgagor pursuant to leases or other occupancy agreements, (iii) the fair rental value of any portion of the Property which is occupied by Mortgagor, and (iv) and any other amounts payable to Mortgagor pursuant to leases or other occupancy agreements;

(3) flood insurance in an amount equal to the lesser of 100% of the full replacement cost of the Improvements, or the maximum amount of insurance obtainable; provided, however, that such insurance shall be required only when all or any portion of the Land is located within a 100-year flood plain or area designated as subject to flood by the Federal Emergency Management Agency or any other governmental agency, or when required by any federal, state or local law, statute, regulation or ordinance;

(4) boiler and machinery insurance insuring against loss or damage to the Property and to the major components of any heating, air conditioning or other ventilation systems and/or such other machinery or apparatus as may be now or hereafter installed in the Improvements, in such amounts as Mortgagee may, from time to time, require;

(5) war risk insurance upon the Property as and when such insurance is obtainable from the United States of America or any agency or instrumentality thereof at a reasonable premium, in an amount not less than 100% of the then full replacement cost of the Improvements (exclusive of the cost of excavations, foundations and footings below the lowest basement floor) without deduction for physical depreciation, to the extent obtainable, and if not so obtainable, in the maximum amount obtainable;

(6) builder's risk insurance insuring against loss or damage from such causes of loss as are embraced by insurance policies of the type now known as "Builder's Risks" property insurance (written on an "all risk" or "open perils" basis), including, without limitation, fire and extended coverage, collapse of the improvements and earthquake coverage to agreed limits, all in form and substance acceptable to Mortgagee and (i) as to property then subject to Restoration (as defined in Section 1.07(b)) or any restoration accomplished in connection with a Condemnation, in an amount not less than the full replacement cost of such property and (ii) as to any additional improvements then being constructed, in an amount not less than the completed value on a nonreporting form, of the additional improvements then being constructed; provided, however, that such insurance shall be required only during any period of Restoration or any restoration accomplished in connection with a Condemnation or any period of construction of any additional improvements;

(7) comprehensive general liability insurance insuring against claims for personal injury (including, without limitation, bodily injury or death), property damage liability and such other loss or damage from such causes of loss as are embraced by insurance policies of the type now known as "Commercial General Liability" insurance, all in such amounts as Mortgagee may require from time to time, but in no event less than \$1,000,000.00 per individual occurrence coverage plus \$5,000,000.00 in umbrella coverage. Such insurance coverage shall be issued and maintained on an "occurrence" basis; and

(8) such other insurance and in such amounts, as may, from time to time, be required by Mortgagee against other insurable hazards or risks, including, but not limited to, environmental impairment liability coverage, nuclear reaction or radioactive contamination coverage and/or earthquake coverage, which hazards or risks at the time are commonly insured against, and

provided such insurance is generally available, for property similarly situated, due regard being given to the height and type of building, its construction, use and occupancy.

(b) Except as herein expressly provided otherwise, all policies of insurance required under this Section 1.05 shall be issued by companies, and be in form, amount, and content and have an expiration date, approved by Mortgagee and as to the policies of insurance required under subparagraphs (1), (3) and (6) of Section 1.05(a), shall contain a Standard Non-Contributory Mortgagee Clause or Lender's Loss Payable Endorsement, or equivalents thereof, in form, scope and substance satisfactory to Mortgagee, in favor of Mortgagee, and as to policies of insurance required under subparagraphs (1), (2), (3), (4), (5) and (6) of Section 1.05(a), shall provide that the proceeds thereof ("Insurance Proceeds") shall be payable to Mortgagee. Any Insurance Proceeds received by Mortgagee pursuant to Section 1.05(a)(2) shall be held and applied by Mortgagee toward payment of that portion of the Secured Indebtedness then due and payable, or which will become due and payable for the period for which such Insurance Proceeds are received by Mortgagee and the remainder, if any, shall be paid to Mortgagor. Mortgagor hereby authorizes and empowers Mortgagee to settle, adjust or compromise any claims for loss, damage or destruction to the Property, regardless of whether there are Insurance Proceeds available or whether any such proceeds are sufficient in amount to fully compensate for such loss or damage. Mortgagee shall be furnished with the original or certified copy of each policy required hereunder, which policy shall provide that it shall not be modified or cancelled without thirty (30) days' prior written notice to Mortgagee. At least thirty (30) days prior to expiration of any policy required hereunder, Mortgagor shall furnish Mortgagee appropriate proof of issuance of a policy continuing in force the insurance covered by the policy so expiring. Mortgagor shall furnish Mortgagee receipts for the payment of premiums on such insurance policies or other evidence of such payment reasonably satisfactory to Mortgagee in the event that such premiums have not been paid to Mortgagee pursuant to Section 1.06 hereof. In the event that Mortgagor does not deposit with Mortgagee a new policy of insurance with evidence of payment of premiums thereon at least thirty (30) days prior to the expiration of any policy, then Mortgagee may, but shall not be obligated to, procure such insurance and pay the premiums therefor and any money paid by Mortgagee for such premiums shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof. All binders, original policies or certified copies of policies, endorsements, copies of certificates and cancellation notices are to be sent to Mortgagee at One Madison Avenue, New York, New York 10010-3690, Attn: Risk Management Unit, Area 3-DE.

(c) In the event of the foreclosure of this Mortgage or other transfer of the title to the Property in extinguishment, in whole or in part, of the Secured Indebtedness, all right, title and interest of Mortgagor in and to any insurance policy, or Premiums (as hereinafter defined) or payments in satisfaction of claims or any other rights thereunder then in force, shall pass to the purchaser or grantee. Nothing contained herein shall prevent accrual of interest as provided in the Note on any portion of the Secured Indebtedness to which the Insurance Proceeds are to be applied until such time as the Insurance Proceeds are actually received by Mortgagee and applied by Mortgagee to reduce the Secured Indebtedness.

1.06 ESCROW DEPOSITS. Without limiting the effect of Sections 1.03, 1.04 and 1.05 hereof, Mortgagor shall pay to Mortgagee monthly at the time when the monthly installment of interest, principal or principal and interest is payable, an amount equal to 1/12th of what Mortgagee estimates

is necessary to pay, on an annualized basis, all (1) Impositions and (2) such premiums for the insurance policies required under Section 1.05(a) hereof ("Premiums") to enable Mortgagee to pay same at least thirty (30) days before the Impositions would become delinquent and the Premiums are due, and, on demand, from time to time shall pay to Mortgagee additional sums necessary to pay the Premiums and Impositions. No amounts so paid shall be deemed to be trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable thereon. In the event that Mortgagor does not pay such sums for Premiums and Impositions, then Mortgagee may, but shall not be obligated to, pay such Premiums and Impositions and any money so paid by Mortgagee shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof. If an Event of Default occurs, Mortgagee shall have the right, at its election, to apply any amounts so held under this Section 1.06 against all or any part of the Secured Indebtedness, or in payment of the Premiums or Impositions for which the amounts were deposited. Mortgagor will furnish to Mortgagee bills for Impositions and Premiums thirty (30) days before Impositions become delinquent and such Premiums become due. The foregoing obligations of Mortgagor are subject to the condition that Mortgagor shall not be required to pay Premiums unless and until (i) an Event of Default occurs or (ii) Mortgagee requests such payments, which request may be made in Mortgagee's sole and absolute discretion.

1.07 RESTORATION.

(a) After the happening of any casualty to the Property, whether or not required to be insured against under the insurance policies to be provided by Mortgagor hereunder, Mortgagor shall give prompt written notice thereof to Mortgagee generally describing the nature and cause of such casualty and the extent of the damage to or destruction of the Property.

(b) Mortgagor hereby assigns to Mortgagee all Insurance Proceeds which Mortgagor may be entitled to receive. In the event of any damage to or destruction of the Property, and provided (1) an Event of Default does not currently exist, and (2) Mortgagee has determined that (i) its security has not been impaired, and (ii) the repair, restoration and rebuilding of any portion of the Property that has been partially damaged or destroyed can be accomplished in full compliance with all Requirements (as defined in Exhibit "A") to the same condition, character and general utility as nearly as possible to that existing prior to such damage or destruction and at least equal value as that existing prior to such damage or destruction (the "Restoration"), then Mortgagor shall commence and diligently pursue to completion the Restoration. Mortgagee shall hold and disburse the Insurance Proceeds less (x) the cost, if any, to Mortgagee of recovering such proceeds including, without limitation, reasonable attorneys' fees and expenses actually incurred, adjusters' fees and fees incurred in Mortgagee's performance of its obligations hereunder, and (y) any insurance proceeds received by Mortgagee pursuant to Section 1.05(a)(2) (the "Net Insurance Proceeds") in the manner hereinafter provided, to the Restoration. In the event that the above conditions for Restoration have not been met, Mortgagee may, at its option, apply the Net Insurance Proceeds to the reduction of the Secured Indebtedness in such order as Mortgagee may determine and Mortgagee may declare the entire Secured Indebtedness immediately due and payable.

(c) In the event the Net Insurance Proceeds are to be used for the Restoration, Mortgagor shall comply with Mortgagee's Requirements For Restoration as set forth in Exhibit "D"

attached hereto and made a part hereof. Upon Mortgagee's receipt of a final certificate of occupancy or other evidence of approval of appropriate governmental authorities for the use and occupancy of the Improvements and other evidence requested by Mortgagee that the Restoration has been completed and the costs thereof have been paid in full, and satisfactory evidence that no mechanic's or similar liens for labor or material supplied in connection with the Restoration are outstanding against the Property and provided that an Event of Default does not currently exist, Mortgagee shall pay any remaining Restoration Funds (as defined in Exhibit "D") then held by Mortgagee to Mortgagor; provided, however, nothing contained herein shall prevent Mortgagee from applying at any time the whole or any part of the Restoration Funds to the curing of any Event of Default.

(d) In the event that Mortgagee applies all or any portion of the Restoration Funds to repay the unpaid Secured Indebtedness as provided in this Section 1.07, after payment in full of the Secured Indebtedness, any remaining Restoration Funds shall be paid to Mortgagor.

1.08 CONDEMNATION. Should the Property or any part thereof be taken by reason of any condemnation or similar eminent domain proceeding, or a grant or conveyance in lieu thereof ("Condemnation"), Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor (not to exceed all amounts due and payable to Mortgagee under the Quail 600 Loan Documents), and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceeding or to make any compromise or settlement in connection with such Condemnation. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as its attorney-in-fact, and such appointment is coupled with an interest, to commence, appear in and prosecute any action or proceeding or to make any compromise or settlement in connection with any such Condemnation. All such compensation, awards, damages, rights of action and proceeds (collectively, the "Condemnation Proceeds") are hereby assigned to Mortgagee, who shall, after deducting therefrom all its reasonable expenses, including reasonable attorneys' fees actually incurred ("Condemnation Expenses"), apply the remaining Condemnation Proceeds to repair any damage to, and to restore the Improvements remaining on the portion of, the Property not taken in the manner provided in Section 1.07 with respect to disposition of Net Insurance Proceeds; provided, however, that at the time of application of the remaining Condemnation Proceeds: (1) there shall not exist an Event of Default; (2) Mortgagor shall have paid to Mortgagee all sums in excess of available Condemnation Proceeds, necessary to repair any damage to and restore the Improvements remaining on the portion of the Property not taken; and (3) Mortgagee shall have determined that its security is not impaired. After restoration of the remaining Improvements, or in the event the conditions precedent for such restoration are not met, Mortgagee shall have the right, after deducting therefrom the Condemnation Expenses, to apply the balance of the Condemnation Proceeds to the Secured Indebtedness, in such manner and such order as Mortgagee in its sole discretion shall determine, without adjustment in the dollar amount of the installments due under the Note unless otherwise determined by Mortgagee in its sole discretion. Nothing contained herein shall prevent the accrual of interest as provided in the Note on any portion of the Secured Indebtedness to which the Condemnation Proceeds are to be applied until such Condemnation Proceeds are actually received by Mortgagee and so applied to reduce the Secured Indebtedness.

1.09 CARE AND USE OF THE PROPERTY.

(a) Mortgagor, at its sole cost and expense, shall keep the Property in good order, condition, and repair, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. Mortgagor shall abstain from, and not permit, the commission of waste in or about the Property and shall not remove or demolish, or alter in any substantial manner, the structure or character of any Improvements without the prior written consent of Mortgagee.

(b) Mortgagor shall at all times comply with all present or future Requirements affecting or relating or pertaining in any way to the Property and/or the use, operation and/or the maintenance thereof, and shall furnish Mortgagee, on request, proof of such compliance. Mortgagor shall not use or permit the use of the Property, or any part thereof, for any illegal purpose.

(c) Mortgagee and Mortgagee's representatives and designees shall have the right, but not the duty, to enter the Property at reasonable times to inspect the same. Mortgagee shall not be liable to Mortgagor or any person in possession of the Property with respect to any matter arising out of such entry to the Property.

(d) Mortgagor shall, from time to time, if and when required by Mortgagee (1) perform a site investigation of the Property to determine the existence and levels of Hazardous Substances (as defined in Exhibit "A") on the Property, (2) issue a report certifying the results of such inspection to Mortgagee, and (3) take such remedial action as may be required by Mortgagee based upon such report.

(e) Mortgagor shall use, or cause to be used, the Property continuously as and for first class property of its type and kind at the time of the execution of this Mortgage. Mortgagor shall not use, or permit the use of, the Property for any other use without the prior written consent of Mortgagee. To the extent the Property is used as a residential apartment complex, Mortgagor shall at no time file or record a Declaration of Condominium, Master Deed of Trust or any other similar document evidencing the imposition of a so-called "condominium regime" whether superior or subordinate to this Mortgage. Mortgagor shall at no time permit any part of the Property to be converted to, or operated as, a so-called "cooperative apartment house" (or on a like cooperative basis) whereby the tenants or occupants thereof participate in the ownership, management or control of any part of the Property, as tenants, stockholders or otherwise.

(f) Mortgagor shall not initiate or acquiesce in a change in the zoning classification of and/or restrictive covenants affecting the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a non-conforming use under applicable zoning ordinances or other applicable laws, ordinances, rules or regulations or subject the Property to restrictive covenants without Mortgagee's prior written consent.

1.10 LEASES AND OTHER AGREEMENTS AFFECTING THE PROPERTY.

(a) In order to further secure payment of the Secured Indebtedness and the observance, performance and discharge of Mortgagor's obligations under the Quail 600 Loan Documents, Mortgagor hereby assigns to Mortgagee all of Mortgagor's right, title, interest and estate in, to and under all of the leases now or hereafter affecting the Property or any part thereof and in and to all of the Rents and Profits (as defined in Exhibit "A"). Unless and until an Event of Default occurs, Mortgagor shall be entitled to collect the Rents and Profits (except as otherwise provided in this Mortgage) as and when they become due and payable. Mortgagee shall be liable to account only for the Rents and Profits of the Property actually received by Mortgagee pursuant to any provision of any Quail 600 Loan Document.

(b) Mortgagor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it or the Property under any lease or any other agreement or instrument of any nature whatsoever which involves or affects the Property or any part thereof. Mortgagor represents that it has heretofore furnished Mortgagee true and complete copies of all executed leases existing on the date of this Mortgage. Upon request of Mortgagee, Mortgagor agrees to furnish Mortgagee with executed copies of all leases hereafter entered into with respect to all or any part of the Property. Mortgagor shall not, without the express written consent of Mortgagee, enter into any new lease or modify, extend or renew, either orally or in writing, any lease now existing or hereafter created upon the Property, or any part thereof, unless such lease shall be in compliance with the Leasing Guidelines (as defined in Exhibit "A"). Mortgagor shall not, without the express written consent of Mortgagee, terminate or surrender any lease now existing or hereafter created upon the Property, or any part thereof, unless Mortgagor has entered into a new lease covering all of the leased premises to be terminated or surrendered, which new lease shall either have been approved by Mortgagee as provided herein, or shall be in compliance with the Leasing Guidelines. Mortgagor shall not permit an assignment or sublease of any lease now existing or hereafter created upon the Property, or any part thereof, without the express written consent of Mortgagee unless such lease shall be in compliance with the Leasing Guidelines.

(c) Each lease of any portion of the Property shall be absolutely subordinate to the lien of this Mortgage, but shall also contain a provision, satisfactory to Mortgagee, that in the event of the exercise of the power of sale hereunder or a sale pursuant to a judgment of foreclosure, such lease, at the sole and exclusive option of the purchaser at such sale, shall not be terminated and the tenant thereunder shall attorn to such purchaser and, if requested to do so, shall enter into a new lease for the balance of the term of such lease then remaining, upon the same terms and conditions. If Mortgagee so requests, Mortgagor shall cause the tenant under each or any of such leases to enter into subordination and attornment agreements with Mortgagee which are satisfactory in form, scope and substance to Mortgagee.

(d) Mortgagor shall not accept payment of advance rents or security deposits equal, in the aggregate, to more than two (2) months' rent.

(e) Mortgagor covenants and agrees that all contracts and agreements relating to the Property to pay leasing commissions, management fees or other compensation shall (1) provide that the obligation to pay such commissions, fees and other compensation will not be enforceable against

any party other than the party who entered into such agreement; (2) be subordinate and inferior to the lien of this Mortgage; and (3) not be enforceable against Mortgagee. Mortgagor shall promptly furnish Mortgagee with evidence of Mortgagor's compliance with this paragraph upon the execution of each such contract or agreement.

(f) Each lease of any portion of the Property shall be senior to the lien of the Junior Lender (as defined in Section 1.16 of this Mortgage).

1.11 BOOKS, RECORDS AND ACCOUNTS. Mortgagor shall keep and maintain or shall cause to be kept and maintained on a calendar year basis, in accordance with generally accepted accounting principles, consistently applied, proper and accurate books, records and accounts reflecting all of the financial affairs of Mortgagor with respect to all items of income and expense in connection with the operation of the Property, whether such income or expense be realized by Mortgagor or by any other person whatsoever (excepting lessees unrelated to and unaffiliated with Mortgagor who have leased from Mortgagor portions of the Property for the purpose of occupying same). Mortgagee or its representatives or designees shall have the right from time to time at all times during normal business hours to examine, with respect to the Property, such books, records and accounts at the office of Mortgagor or other person maintaining such books, records and accounts and to make copies or extracts thereof as Mortgagee shall desire. Mortgagee shall also have the right to discuss Mortgagor's affairs, finances and accounts with representatives of Mortgagor, at such reasonable times as may be requested by Mortgagee. Mortgagor shall deliver to Mortgagee within ninety (90) days after the close of each calendar year, financial statements prepared by an independent certified public accountant satisfactory to Mortgagee, containing a balance sheet, profit and loss statements and income and expense statements with such detailed supporting schedules covering the operation of the Property as Mortgagee shall require and certified by the chief financial officer of Mortgagor, if Mortgagor is a corporation, by a general partner of Mortgagor, if Mortgagor is a partnership, or by Mortgagor, if Mortgagor is an individual. Mortgagor shall also furnish at such time a rent roll certified by Mortgagor to be correct showing each tenant, the term of the lease, the rentable area demised thereunder and the fixed annual rent, percentage rent, other charges, if any, payable thereunder, date of last rental payment, amount of security deposit, nature and amounts of defaults (if any) and such other matters as Mortgagee may require.

1.12 SUBROGATION. As additional security hereunder, Mortgagee shall be subrogated to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the loan evidenced by the Note and secured by this Mortgage and Mortgagee, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment.

1.13 COLLATERAL SECURITY INSTRUMENTS. Mortgagor covenants and agrees that if Mortgagee at any time holds additional security for any obligations secured hereby, it may enforce the terms thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder, and may apply the proceeds to the Secured Indebtedness in such order as Mortgagee may determine, without affecting the status of or waiving any right to exhaust all or any other security, including the security hereunder, and without waiving any breach or default

or any right or power whether exercised hereunder or under any of the other Quail 600 Loan Documents, or contained herein or therein, or in any such other security.

1.14 SUITS AND OTHER ACTS TO PROTECT THE PROPERTY.

(a) Mortgagor covenants and agrees to appear in and defend any action or proceeding purporting to affect the Property, any other security afforded by any of the Quail 600 Loan Documents and/or the interest of Mortgagee thereunder. Mortgagor shall immediately notify Mortgagee of the commencement, or receipt of notice, of any such action or proceeding or other matter or claim purporting to, or which could, affect the Property, any other security afforded by any of the Quail 600 Loan Documents and/or the interest of Mortgagee thereunder.

(b) Mortgagee shall have the right, at the cost and expense of Mortgagor, to institute and maintain such suits and proceedings and take such other action, as it may deem expedient to preserve or protect the Property, any other security afforded by any of the Quail 600 Loan Documents and/or Mortgagee's interest therein. Any money paid by Mortgagee under this Section 1.14(b) shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

1.15 MORTGAGEE'S RIGHT TO PERFORM MORTGAGOR'S OBLIGATIONS.

Mortgagor agrees that, if Mortgagor fails to perform any act or to pay any money which Mortgagor is required to perform or pay under the Quail 600 Loan Documents, Mortgagee, at the cost and expense of Mortgagor and in Mortgagor's name or in its own name, may (but shall not be obligated to) perform or cause to be performed such act or take such action or pay any money. Any money paid by Mortgagee under this Section 1.15 shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

1.16 LIENS AND ENCUMBRANCES. Mortgagor shall not, without the prior written consent of Mortgagee, create, place or suffer to be created or placed, or through any act or failure to act, allow to remain, any deed of trust, mortgage, security interest, or other lien, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Exceptions and the lien for ad valorem taxes on the Property not yet delinquent, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property, Mortgagor shall cause the same to be promptly discharged and released. Mortgagor shall own all parts of the Property and, except as expressly approved in writing by Mortgagee, shall not acquire any fixtures, equipment or other property forming a part of the Property pursuant to a lease, license, title retention document or similar agreement. Notwithstanding anything in this Mortgage to the contrary, Mortgagee hereby acknowledges its consent to Mortgagor placing a second mortgage on the Property pursuant to the loan documents executed by Mortgagor in favor of Southern Indiana Properties, Inc. ("Junior Lender"), subject to the terms and conditions set forth in that certain Subordination Agreement (the "Subordination Agreement") dated of even date herewith by and among Mortgagor, Mortgagee and Junior Lender.

1.17 LIABILITY OF MORTGAGOR. Notwithstanding anything to the contrary contained in this Mortgage or in any of the other Quail 600 Loan Documents, but without in any manner releasing, impairing or otherwise affecting the Note or any of the other Quail 600 Loan Documents, or the validity hereof or thereof, or the lien of this Mortgage or the Deeds of Trust, upon the occurrence of an Event of Default, except as expressly set forth in this Section 1.17, the liability of Mortgagor and/or the general partners of Mortgagor, if any, to Mortgagee for any and all such Events of Default shall be limited to and satisfied out of the Property and/or other collateral securing the Secured Indebtedness, including, without limitation, all "Property" as such term is defined in this Mortgage and in the Deeds of Trust. Notwithstanding any of the foregoing, nothing contained in this Section 1.17 shall be deemed to prejudice the rights of Mortgagee to (1) proceed against any entity or person whatsoever, including Mortgagor and/or the general partners of Mortgagor, if any, with respect to the enforcement of any leases, guarantees, bonds, policies of insurance or other agreements (specifically excluding the Quail 600 Loan Documents) for compliance with any of the terms, covenants and conditions of the Quail 600 Loan Documents; and/or (2) recover damages against Mortgagor and the general partners of Mortgagor, if any, for fraud, breach of trust, breach of warranty, misrepresentation or waste; and/or (3) recover any loan proceeds, Condemnation Proceeds or Insurance Proceeds or other similar funds or payments attributable to the Property, which have been misapplied by Mortgagor or which under the terms of the Quail 600 Loan Documents should have been paid to Mortgagee; and/or (4) recover any tenant security deposits, prepaid rents or other similar sums paid to or held by Mortgagor or any other entity or person in connection with the Property; and/or (5) recover the Rents and Profits accruing from and after the occurrence of an Event of Default, which have not been applied to pay any portion of the Secured Indebtedness, operating and maintenance expenses of the Property, Premiums, Impositions, deposits into a reserve for replacement or other sums required by the Quail 600 Loan Documents; and/or (6) recover damages against Mortgagor and/or the general partners of Mortgagor, if any, arising from, or in connection with, the covenants, obligations, liabilities, warranties and representations contained in Section 3.08 hereof and under the Unsecured Indemnity Agreement; and/or (7) except to the extent Mortgagee actually receives proceeds therefor under its lender's title policy, recover from Mortgagor and/or the general partners of Mortgagor, if any, the Secured Indebtedness, in the event of (a) any judicial determination that the lien of the Mortgage is invalid or (b) the exercise of any right or remedy under any federal, state or local forfeiture laws resulting in the loss of the priority of the lien of the Mortgage; and/or (8) recover from Mortgagor and/or the general partners of Mortgagor, if any, all amounts due and payable pursuant to Sections 3.06 and 3.10 hereof; and/or (9) recover from Mortgagor and/or the general partners of Mortgagor, if any, all amounts due under the recourse provisions set forth in the other Quail 600 Loan Documents which are substantially identical to the recourse provisions set forth in this Section 1.17. Mortgagor and the general partners of Mortgagor, if any, shall be personally liable for Mortgagor's obligations arising in connection with the matters set forth in the foregoing clauses (1) to (9) inclusive.

1.18 ERISA REPRESENTATIONS AND WARRANTIES. Mortgagor hereby represents, warrants and covenants that:

(a) Mortgagor is not an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title

I of ERISA, nor a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (each of the foregoing hereinafter referred to collectively as a "Plan");

(b) Mortgagor's assets do not constitute "plan assets" of one or more of such Plans within the meaning of Department of Labor Regulation Section 2510-3-101;

(c) Mortgagor will not transfer or convey the Property to a Plan or to a person or entity whose assets constitute such "plan assets", and Mortgagor will not be reconstituted as a Plan or as an entity whose assets constitute "plan assets";

(d) Mortgagor will not enter into any lease or occupancy agreement affecting any portion of space within the Property unless the tenant thereunder represents that it is not a Plan or an entity whose assets constitute such "plan assets"; and

(e) With respect to the loan evidenced by the Note and secured by this Mortgage, Mortgagor is acting on its own behalf and not on account of or for the benefit of any Plan.

ARTICLE II DEFAULTS AND REMEDIES

2.01 EVENTS OF DEFAULT. Any of the following shall be deemed to be a material breach of Mortgagor's covenants herein and shall constitute a default hereunder ("Event of Default"):

(a) The failure of Mortgagor to pay any installment of principal, interest or principal and interest, any required escrow deposit or any other sum required to be paid under any Quail 600 Loan Document, whether to Mortgagee or otherwise, when the same shall become due and payable;

(b) The failure of Mortgagor to perform or observe any other term, provision, covenant, condition or agreement under the Note, this Mortgage, the Assignment of Leases and the Escrow Agreement;

(c) Except as set forth in Section 2.01(b) above, the failure of Mortgagor to perform or observe any other term, provision, covenant, condition or agreement under any of the other Quail 600 Loan Documents;

(d) The filing by Mortgagor or Mortgagor's general partner of a voluntary petition or application for relief in bankruptcy or Mortgagor's or Mortgagor's general partner's adjudication as a bankrupt or insolvent, or the filing by Mortgagor or Mortgagor's general partner of any petition, application for relief or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law, code or regulation relating to bankruptcy, insolvency or other relief for debtors, or Mortgagor's or Mortgagor's general partner seeking or consenting to or acquiescing in the appointment of any trustee, custodian, conservator, receiver or liquidator of Mortgagor or Mortgagor's general partner or of all or any substantial part of the Property or of any or all of the Rents

and Profits thereof, or the making of any general assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due;

(e) The institution of any involuntary bankruptcy petition against Mortgagor or Mortgagor's general partner or the involuntary appointment of a receiver or similar official with respect to any part of the Property and such proceedings are not dismissed or such appointment vacated within 60 (sixty) days following the filing date;

(f) If any warranty, representation, certification, financial statement or other information made or furnished at any time pursuant to the terms of the Quail 600 Loan Documents or otherwise, by Mortgagor, or by any person or entity otherwise liable under any Quail 600 Loan Document shall be materially false or misleading or furnished with knowledge of the false nature thereof;

(g) If Mortgagor shall suffer or permit the Property, or any part thereof, to be used in such manner as might tend to (1) impair Mortgagor's title to the Property, or any part thereof; or (2) create rights of adverse use or possession; or (3) constitute an implied dedication of the Property, or any part thereof;

(h) If Junior Lender exercises any of its rights and remedies under the Junior Loan Documents (as defined in the Subordination Agreement) in violation of the terms and conditions set forth in the Subordination Agreement; and

(i) The institution of any suit seeking the forfeiture of the Property, or any interest therein, as a result of criminal or quasi-criminal activities by Mortgagor or any person or entity that directly or indirectly controls, is controlled by, or is under common control with Mortgagor and such suit is not dismissed within 60 days following the filing date.

2.02 REMEDIES UPON DEFAULT. Upon Mortgagor's failure to cure (1) an Event of Default described in Section 2.01(a) within seven (7) days after the occurrence of such Event of Default, (2) an Event of Default described in Section 2.01(b) within thirty (30) days after the date Mortgagee sends notice of such Event of Default to Mortgagor, (3) an Event of Default described in Section 2.01(g) within ten (10) days after the date Mortgagee sends notice of such Event of Default to Mortgagor, or (4) the happening of any other Event of Default, the Secured Indebtedness shall, at the option of Mortgagee, become immediately due and payable, without further notice or demand, and Mortgagee may forthwith undertake any one or more of the following:

(a) **Foreclosure.** Institute an action of mortgage foreclosure in accordance with the law of the State, or take such other action as the law may allow, at law or in equity, for the enforcement of the Quail 600 Loan Documents and realization on the Property or any other security afforded by the Quail 600 Loan Documents and, in the case of a judicial proceeding, proceed to final judgment and execution thereon for the amount of the Secured Indebtedness (as of the date of such judgment) together with all costs of suit, attorneys' fees and interest on such judgment at the maximum rate permitted by law from and after the date of such judgment until actual payment is made to

Mortgagee in the full amount due Mortgagee; provided, however, if Mortgagee is the purchaser at the foreclosure sale of the Property, the foreclosure sale price (Mortgagee's final bid) shall be applied against the total amount due Mortgagee; and/or

(b) Power of Sale. Sell the Property, either in person or by auctioneer, at public outcry in front of the courthouse door in the county where the Property or any part thereof may be, to the highest bidder for cash, having first given notice of the time, terms and place of such sale by publishing a notice thereof once a week for three consecutive weeks prior to said sale in some newspaper published in said county, all other notice being hereby waived by Mortgagor; and Mortgagee may thereupon execute and deliver to the purchaser at said sale a sufficient conveyance of the Property in fee simple, which conveyance may contain recitals as to the happening of the default upon which the execution of the power of sale, herein granted, depends, and said recitals shall be presumptive evidence that all preliminary acts prerequisite to said sale and deed were in all things duly complied with; and Mortgagee, or its heirs, agents, representatives, successors or assigns, may bid for and purchase the Property, and, upon compliance with the terms of the sale and applicable law, may hold, retain, possess and dispose of such Property in its own absolute right without further accountability to Mortgagor; to the full extent permitted by applicable law, the Property or any part thereof, may be sold in one parcel and as an entirety, or in such parcels, manner or order as Mortgagee in its sole discretion may elect, and one or more exercises of the rights herein granted shall not extinguish or exhaust the rights unless the entire Property is sold or the Secured Indebtedness paid in full; and Mortgagee, or its assigns, shall collect the proceeds of such sale, applying such proceeds as provided in this Mortgage or as required by applicable law; and Mortgagor agrees that in case of a sale, as herein provided, Mortgagor or any person in possession under Mortgagor shall then become and be tenants holding over, and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over; the rights hereby granted are in addition to any and all other remedies which Agent may have at law or in equity; and/or

(c) Entry. Enter into possession of the Property, lease the same, collect all Rents and Profits therefrom and, after deducting all costs of collection and administration expenses, apply the remaining Rents and Profits in such order and amounts as Mortgagee, in Mortgagee's sole discretion, may elect to the payment of Impositions, operating costs, Premiums and other charges (including, but not limited to, costs of leasing the Property and fees and costs of counsel and receivers) and to the maintenance, repair, and restoration of the Property, or on account and in reduction of the Secured Indebtedness; and/or

(d) Receivership. Have a receiver appointed to enter into possession of the Property, collect the Rents and Profits therefrom and apply the same as the appropriate court may direct. Mortgagee shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of Mortgagor or any other person who may be legally or equitably liable to pay any portion of the Secured Indebtedness and Mortgagor and each such person shall be deemed to have waived such proof and to have consented to the appointment of such receiver. Should Mortgagee or any receiver collect the Rents and Profits, the moneys so collected shall not be substituted for payment of the Secured Indebtedness nor can they be used to cure the Event of Default.

2.03 APPLICATION OF PROCEEDS OF SALE. In the event of a sale of the Property pursuant to Section 2.02(a) or Section 2.02(b) hereof, the proceeds of said sale, to the extent permitted by law, shall be applied to the following, in such order as Mortgagee shall, in its sole discretion, determine: the expenses of such sale and of all proceedings in connection therewith, including attorneys' fees and expenses; Impositions, Premiums, liens, and other charges and expenses; the outstanding principal balance of the Secured Indebtedness; any accrued interest; and any other unpaid portion of the Secured Indebtedness.

ARTICLE III GENERAL COVENANTS

3.01. SECURITY AGREEMENT.

(a) THIS MORTGAGE CREATES A LIEN ON THE PROPERTY, AND TO THE EXTENT THE PROPERTY IS PERSONAL PROPERTY UNDER APPLICABLE LAW, THIS MORTGAGE CONSTITUTES A SECURITY AGREEMENT UNDER THE UNIFORM COMMERCIAL CODE OF THE STATE WHERE THE PERSONAL PROPERTY IS SITUATED (THE "U.C.C.") AND ANY OTHER APPLICABLE LAW AND IS FILED AS A FIXTURE FILING. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, MORTGAGEE MAY, AT ITS OPTION, PURSUE ANY AND ALL RIGHTS AND REMEDIES AVAILABLE TO A SECURED PARTY WITH RESPECT TO ANY PORTION OF THE PROPERTY, AND/OR MORTGAGEE MAY, AT ITS OPTION, PROCEED AS TO ALL OR ANY PART OF THE PROPERTY IN ACCORDANCE WITH MORTGAGEE'S RIGHTS AND REMEDIES WITH RESPECT TO THE LIEN CREATED BY THIS MORTGAGE.

(b) The grant of a security interest to Mortgagee in the granting clause of this Mortgage shall not be construed to derogate from or impair the lien or provisions of or the rights of Mortgagee under this Mortgage with respect to any property described therein which is real property or which the parties have agreed to treat as real property. The hereby stated intention of Mortgagor and Mortgagee is that everything used in connection with the production of income from such real property or adapted for use thereon is, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property, irrespective of whether or not the same is physically attached to the Land and/or Improvements.

(c) If required by Mortgagee, at any time during the term of this Mortgage, Mortgagor will execute and deliver to Mortgagee, in form satisfactory to Mortgagee, additional security agreements, financing statements and/or other instruments covering all Personal Property or fixtures of Mortgagor which may at any time be furnished, placed on, or annexed or made appurtenant to the Real Property or used, useful or held for use, in the operation of the Improvements.

(d) Mortgagor hereby irrevocably constitutes and appoints Mortgagee as its attorney-in-fact and such appointment is coupled with an interest, to execute, deliver and file with the appropriate filing officer or office such security agreements, financing statements and/or other

instruments as Mortgagee may request or require in order to impose and perfect the lien and security interest created hereby more specifically on the Personal Property or any fixtures.

(e) If Mortgagor enters into a separate security agreement with Mortgagee relating to any of the Personal Property or fixtures, the terms of such security agreement shall govern the rights and remedies of Mortgagee after an Event of Default thereunder.

(f) It is understood and agreed that, in order to protect Mortgagee from the effect of U.C.C. Section 9-313, as amended from time to time, in the event that Mortgagor intends to purchase any goods which may become fixtures attached to the Property, or any part thereof, and such goods will be subject to a purchase money security interest held by a seller or any other party:

(1) Mortgagor shall, before executing any security agreement or other document evidencing or perfecting such security interest, obtain the prior written approval of Mortgagee, and all requests for such written approval shall be in writing and contain the following information:

- (i) a description of the fixtures to be replaced, added to, installed or substituted;
- (ii) the address at which the fixtures will be replaced, added to, installed or substituted; and
- (iii) the name and address of the proposed holder and proposed amount of the security interest.

Mortgagor's execution of any such security agreement or other document evidencing or perfecting such security interest without Mortgagee's prior written approval shall constitute an Event of Default. No consent by Mortgagee pursuant to this subparagraph shall be deemed to constitute an agreement to subordinate any right of Mortgagee in fixtures or other property covered by this Mortgage.

(2) If at any time Mortgagor fails to make any payment on an obligation secured by a purchase money security interest in the Personal Property or any fixtures, Mortgagee, at its option, may at any time pay the amount secured by such security interest. Any money paid by Mortgagee under this subparagraph, including any expenses, costs, charges and reasonable attorney's fees actually incurred by Mortgagee, shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof. Mortgagee shall be subrogated to the rights of the holder of any such purchase money security interest in the Personal Property.

(3) Mortgagee shall have the right to acquire by assignment from the holder of such security interest any and all contract rights, accounts receivable, negotiable or non-negotiable instruments, or other evidence of Mortgagor's indebtedness for such Personal Property or fixtures, and, upon acquiring such interest by assignment, shall have the right to enforce the security

interest as assignee thereof, in accordance with the terms and provisions of the U.C.C. and in accordance with any other provisions of law.

(4) Whether or not Mortgagee has paid the indebtedness secured by, or taken an assignment of, such security interest, Mortgagor covenants to pay all sums and perform all obligations secured thereby, and if Mortgagor at any time shall be in default under such security agreement, it shall constitute an Event of Default.

(5) The provisions of subparagraphs (2) and (3) of this paragraph (f) shall not apply if the goods which may become fixtures are of at least equivalent value and quality as any property being replaced and if the rights of the party holding such security interest have been expressly subordinated, at no cost to Mortgagee, to the lien and security interest of this Mortgage in a manner satisfactory to Mortgagee, including without limitation, at the option of Mortgagee, providing to Mortgagee a satisfactory opinion of counsel or updated mortgagee title policy to the effect that this Mortgage constitutes a valid and subsisting first lien on such fixtures which is not subordinate to the lien of such security interest under any applicable law, including without limitation, the provisions of Section 9-313 of the U.C.C.

(g) Mortgagor hereby warrants, represents and covenants as follows:

(1) Mortgagor is and has been the sole owner of the Personal Property for at least fifteen (15) days free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will protect, defend and indemnify Mortgagee against, all claims and demands of all persons at any time claiming any rights or interest therein.

(2) The Personal Property is not used or bought and shall not be used or bought for personal, family, or household purposes, but shall be bought and used solely for the purpose of carrying on Mortgagor's business.

(3) The Personal Property has been located on the Land and/or Improvements for at least fifteen (15) days and will be kept on or at the Land or the Improvements and Mortgagor will not remove the Personal Property therefrom without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor with other Personal Property of value equal to or greater than the value of the replaced Personal Property when new, and except such portions or items of Personal Property temporarily stored elsewhere to facilitate refurbishing or repair thereof or of the Improvements.

(4) Mortgagor maintains a place of business in the State and Mortgagor will immediately notify Mortgagee in writing of any change in its principal place of business as set forth in the beginning of this Mortgage.

3.02 NO WAIVER. No single or partial exercise by Mortgagee, or delay or omission in the exercise by Mortgagee, of any right or remedy under the Quail 600 Loan Documents shall preclude, waive or limit any other or further exercise thereof or the exercise of any other right or remedy. Mortgagee shall at all times have the right to proceed against any portion of, or interest in, the Property in such manner as Mortgagee may deem fit, without waiving any other rights or remedies with respect to any other portion of the Property.

3.03 CONVEYANCE OF PROPERTY, CHANGE IN OWNERSHIP AND COMPOSITION.

(a) Mortgagor shall not cause, permit or suffer: (i) the Property, or any part thereof, or any interest therein, to be conveyed, transferred, assigned, encumbered, sold or otherwise disposed of; (ii) any conveyance, transfer, pledge or encumbrance of any interest in Mortgagor; or (iii) any change in the individual(s) comprising Mortgagor or in the partners, stockholders or beneficiaries of Mortgagor from those on the date hereof. The foregoing prohibitions shall not be applicable to (i) transfers of ownership as a result of the death of a natural person who is Mortgagor or (ii) transfers by a natural person to a spouse, son or daughter or descendant of either, a stepson or stepdaughter or descendant of either, or (iii) transfers by any natural person in connection with bona fide estate planning, or (iv) transfers of partnership interests in accordance with the terms and conditions set forth in the Subordination Agreement, or (v) a transfer or change of composition of Mortgagor consummated in accordance with the terms and conditions set forth in Section 3.03(c) of this Mortgage, or (vi) a sale of all or a portion of the Property in accordance with Section 3.03(d) of this Mortgage.

(b) Mortgagor agrees to submit or cause to be submitted to Mortgagee within thirty (30) days after December 31st of each calendar year during the term hereof, without further request from Mortgagee, and within ten (10) days after any written request by Mortgagee for the same, a sworn, notarized certificate, signed by an authorized (i) individual who is Mortgagor or one of the individuals comprising Mortgagor, (ii) a partner of Mortgagor or (iii) officer of the general partner of Mortgagor, as the case may be, stating whether the Property, or any part thereof, or any interest therein, has been conveyed, transferred, assigned, encumbered, sold or otherwise disposed of, and if so, to whom; any conveyance, transfer, pledge or encumbrance of any interest in Mortgagor has been made by Mortgagor and if so, to whom, or there has been any change in the individual(s) comprising Mortgagor or in the partners, stockholders or beneficiaries of Mortgagor from those on the date hereof, and if so, a description of such change or changes.

(c) Mortgagor hereby acknowledges to Mortgagee that (i) the identity and expertise of Mortgagor were and continue to be material circumstances upon which Mortgagee has relied in connection with, and which constitute valuable consideration to Mortgagee for, the extending to Mortgagor of the Secured Indebtedness and (ii) any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Secured Indebtedness. Notwithstanding the preceding sentence, Mortgagee shall, on one (1) occasion only, give its prior written consent to a conveyance or sale of all of the "Property" as defined in this Mortgage and the Deeds of Trust (collectively, the "Quail 600 Secured Properties"), but not one or two, or (ii) to a change in the composition of Mortgagor, provided the following terms and conditions are met:

(i) There shall not exist, either at the time the request for transfer or change of composition is delivered to Mortgagee or on the date the closing of the transfer or change in composition, any Event of Default under this Mortgage or any default or Event of Default under any of the other Quail 600 Loan Documents which has not been cured within any applicable cure period;

(ii) No more than one (1) transfer or change under this Section 3.03(c) in composition shall be permitted prior to the payment in full of the Secured Indebtedness;

(iii) The Quail 600 Loan Documents shall remain in all respects in full force and effect and the transfer or change in composition shall not adversely affect or impair Mortgagee's security under the Quail 600 Loan Documents;

(iv) Mortgagee shall have approved the identity of the transferee or purchaser of the Quail 600 Secured Properties or of the entities involved in the change in the composition of Mortgagee, which approval shall be conditioned on: (1) evidence satisfactory to Mortgagee that such transferee or purchaser or Mortgagor as newly composed has a net worth and financial condition at least equal to the net worth and financial condition of Mortgagor as of the date hereof and (2) such transferee or purchaser or Mortgagor as newly composed has demonstrated ability and previous experience of professional management for properties similar to the Quail 600 Secured Properties;

(v) Mortgagor shall have been paid, unless such payment would constitute a violation of any applicable law, a fee of one (1%) percent of the outstanding principal balance of the Quail 600 Notes at the time of such transfer, purchase or change in composition;

(vi) The transferee, purchaser or Mortgagor as newly composed shall have entered into an agreement, prepared at Mortgagor's expense by counsel selected by Mortgagee, providing that (1) the transferee, purchaser or Mortgagor as newly composed shall assume all of the obligations of Mortgagor under the Quail 600 Loan Documents, (2) any further sale, conveyance or change in the composition of Mortgagor (not otherwise excepted under Section 3.03(a) (i)-(iv) and (vi)) shall constitute an Event of Default, and (3) the transferee, purchaser or Mortgagor as newly composed shall enter into (x) an unsecured indemnity agreement, in form, scope and substance substantially identical to the Unsecured Indemnity Agreement and (y) such other agreements as shall be required by Mortgagee in its sole discretion;

(vii) Mortgagor, at its sole cost and expense, shall cause to be delivered to Mortgagee an endorsement(s) to Mortgagee's title insurance policy updating the policy and containing no exceptions to title not found in the original mortgagee title

insurance policy delivered on the date hereof other than those approved by Mortgagee; and

(viii) If at the time of a proposed transfer or conveyance of the Quail 600 Secured Properties the "Loan to Value Ratio" (as defined below) as of the last day of the immediately preceding calendar month before such transfer or conveyance, shall be greater than seventy (70%) percent then, at Mortgagee's option and in its absolute and sole discretion, Mortgagee may require Mortgagor to pay, at the time for such transfer or conveyance, a prepayment of principal such that the Loan to Value Ratio shall be reduced to a number equal to 70% without payment of any Prepayment Fee.

As used in this Section 3.03(c) the term "Loan to Value Ratio" means a number between 0 and 1 derived by dividing (i) the outstanding principal balance of all of the Quail 600 Notes by (ii) in Mortgagee's sole discretion, either (1) the total consideration of such conveyance or transfer, provided such conveyance is a bona fide transaction or (2) the appraised value approved by Mortgagee in its sole and absolute discretion as determined by an MAI appraiser, paid for by Mortgagor, and selected and engaged by Mortgagee in Mortgagee's sole and absolute discretion.

(d) Mortgagor shall have the right to sell or transfer all, but not a portion of, the Property, provided the following terms and conditions are met:

(i) Mortgagor shall pay to Mortgagee (1) the Prepayment Fee (as defined in the Note), (2) a processing fee of one-fourth (1/4%) percent of the outstanding amount of principal being prepaid, and (3) the outstanding principal balance of the Note, all accrued and unpaid interest thereon and any other unpaid amounts due and payable under the Note; and

(ii) The remaining Quail 600 Notes must meet a seventy (70%) percent loan-to-value test, on an individual and combined basis, verified by an independent MAI appraisal paid for by Mortgagor, engaged by Mortgagee and approved in Mortgagee's sole and absolute discretion. If the remaining Quail 600 Notes are in excess of 70% loan-to-value, Mortgagor shall pay down the principal balance to 70% at the time the Property is sold without payment of any Prepayment Fee.

3.04 MORTGAGOR'S ESTOPPEL. Mortgagor shall, within ten (10) days after a request by Mortgagee, furnish a duly acknowledged written statement in form satisfactory to Mortgagee setting forth the amount of the Secured Indebtedness, stating either that no offsets or defenses exist against the Secured Indebtedness, or if such offsets or defenses are alleged to exist, the nature and extent thereof and such other matters as Mortgagee may reasonably request.

3.05 FURTHER ASSURANCES. Mortgagor shall, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, deeds of trust, assignments, security agreements, financing statements, modifications, notices of assignment, transfers and assurances as Mortgagee shall from time to time reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto

Mortgagee the Property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or any of the other Quail 600 Loan Documents, or for filing, refiling, registering, reregistering, recording or rerecording this Mortgage. Upon any failure by Mortgagor to comply with the terms of this Section, Mortgagee may, at Mortgagor's expense, make, execute, record, file, re-record and/or refile any and all such documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact so to do and such appointment is coupled with an interest.

3.06 FEEES AND EXPENSES. If Mortgagee becomes a party (by intervention or otherwise) to any action or proceeding affecting, directly or indirectly, Mortgagor, the Property or the title thereto or Mortgagee's interest under this Mortgage, or employs an attorney to collect any of the Secured Indebtedness or to enforce performance of the obligations, covenants and agreements of the Quail 600 Loan Documents, Mortgagor shall reimburse Mortgagee for all expenses, costs, charges and reasonable legal fees actually incurred by Mortgagee (including, without limitation, the fees and expenses of experts and consultants), whether or not suit be commenced, and the same shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

3.07 REPLACEMENT OF NOTE. Upon notice to Mortgagor of the loss, theft, destruction or mutilation of the Note, Mortgagor will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in any of the Quail 600 Loan Documents to the Note shall be deemed to refer to such replacement note.

3.08 HAZARDOUS SUBSTANCES.

(a) Mortgagor hereby represents, warrants, covenants and agrees to and with Mortgagee that all operations or activities upon, or any use or occupancy of the Property, or any portion thereof, by Mortgagor, and any tenant, subtenant or occupant of the Property, or any portion thereof, is presently and shall hereafter be in all respects in compliance with all state, federal and local laws and regulations governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether legal or illegal, accidental or intentional) of any Hazardous Substance; and that neither Mortgagor nor (to the best of Mortgagor's knowledge, after due inquiry) any tenant, subtenant or occupant of all or any portion of the Property, has at any time placed, suffered or permitted the presence of any such Hazardous Substances at, on, under, within or about the Property, or any portion thereof in violation of applicable law.

(b) In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the "Remedial Work") is required under any applicable federal, state or local law or regulation, by any judicial order, or by any governmental entity, or in order to comply with any agreement entered into because of, or in connection with, any occurrence or event described in this Section, Mortgagor shall perform or cause to be performed the Remedial Work in compliance with such law, regulation, order or agreement. All

Remedial Work shall be performed by one or more contractors, selected by Mortgagor and approved in advance in writing by Mortgagee, and under the supervision of a consulting engineer, selected by Mortgagor and approved in advance in writing by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor including, without limitation, the charges of such contractor(s) and/or the consulting engineer, and Mortgagee's reasonable attorneys', architects' and/or consultants' fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

3.09 WAIVER OF CONSEQUENTIAL DAMAGES. Mortgagor covenants and agrees that in no event shall Mortgagee be liable for consequential damages, whatever the nature of a failure by Mortgagee to perform its obligation(s), if any, under the Quail 600 Loan Documents, and Mortgagor hereby expressly waives all claims that it now or may hereafter have against Mortgagee for such consequential damages.

3.10 MORTGAGEE REIMBURSEMENT. Any payments made, or funds expended or advanced by Mortgagee pursuant to the provisions of any Quail 600 Loan Document, shall (1) become a part of the Secured Indebtedness, (2) bear interest at the Interest Rate (as such term is defined in the Note) from the date such payments are made or funds expended or advanced, (3) become due and payable by Mortgagor upon demand therefor by Mortgagee, and (4) bear interest at the Default Rate (as such term is defined in the Note) from the date of such demand. Failure to reimburse Mortgagee upon such demand shall constitute an Event of Default under Section 2.01(a) hereof.

3.11. EXISTENCE; MAINTENANCE OF OFFICE. (a) So long as the Quail 600 Notes are outstanding, Mortgagor shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a limited partnership and its qualification to do business in the State of Alabama and the State of North Carolina and all of its rights, privileges and franchises. So long as the Quail 600 Notes are outstanding, each general partner of Mortgagor shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a corporation and its qualification to do business in the State of Alabama and the State of North Carolina and all of its rights, privileges and franchises.

(b) Mortgagor shall at all times ensure that (i) it conducts its business only as permitted by its limited partnership agreement, (ii) Mortgagor's funds and other assets are not commingled with those of its general partner or any other person or entity, (iii) Mortgagor's general partner has taken and shall take all appropriate actions to authorize all material actions of Mortgagor as they relate to execution and delivery of the Quail 600 Loan Documents, (iv) the directors and officers of the general partner of Mortgagor will act independently and in the interests of Mortgagor which will be within the purpose stated in Mortgagor's limited partnership agreement, (v) Mortgagor and Mortgagor's general partner maintain separate records and books of account from each other, (vi) Mortgagor, Mortgagor's general partner and the shareholders of Mortgagor's general partner shall each maintain separate financial and other records, (vii) Mortgagor and Mortgagor's general partner have each provided and

will provide for its operating expenses and liabilities therefor (not related to the Property) from its own funds, (viii) Mortgagor and Mortgagor's general partner are and will be adequately capitalized in light of their contemplated business obligations and expected revenues, (ix) Mortgagor, Mortgagor's general partner and the shareholders of Mortgagor's general partner will engage in transactions with each other (1) only on terms and conditions comparable to transactions on an arms-length basis with unaffiliated persons and entities and (2) only with the prior approval of the boards of directors of Mortgagor's general partner to the extent that such prior approval is usual and customary, (x) Mortgagor and Mortgagor's general partner will not guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the debts of others, and (xii) Mortgagor and Mortgagor's general partner will not acquire obligations or securities of, or make loans or advances to, any other persons or entities. Mortgagor shall not amend its limited partnership agreement except to reflect transfers of partnership interests as permitted therein and herein, without the prior written consent thereto of Mortgagee. Mortgagor's general partner shall not amend its articles of incorporation without the prior written consent thereto of Mortgagee.

(c) Mortgagor hereby represents and warrants that: (i) Daniel/Fidelity Meadow Brook Corporate Park General Partnership, an Alabama general partnership ("Daniel/Fidelity"), has no outstanding indebtedness for which Mortgagor is or may be liable, (ii) Daniel/Fidelity shall not incur any indebtedness in the future for which Mortgagor shall or may be liable, (iii) Mortgagor has not guaranteed the debts of any other person or entity, (iv) Mortgagor is not obligated for the debts of any other person or entity (other than for the debts of Daniel/Fidelity as disclosed to Mortgagee in writing prior to the date of this Mortgage), and (v) Mortgagor has not held out its credit as being available to satisfy the obligations of any other person or entity.

ARTICLE IV MISCELLANEOUS COVENANTS

4.01 REMEDIES CUMULATIVE. No right, power or remedy conferred upon or reserved to Mortgagee by any of the Quail 600 Loan Documents is intended to be exclusive of any other right, power or remedy, but shall be cumulative and concurrent and in addition to any other right, power and remedy given hereunder or under any of the other Quail 600 Loan Documents or now or hereafter existing under applicable law.

4.02 NOTICES. All notices, demands and requests given or required to be given by, pursuant to, or relating to, this Mortgage shall be in writing. All notices hereunder shall be deemed to have been duly given if mailed by United States registered or certified mail, with return receipt requested, postage prepaid, or by United States Express Mail or other comparable overnight courier service to the parties at the addresses set forth on Exhibit "A" (or at such other addresses as shall be given in writing by any party to the others) and shall be deemed complete upon receipt or refusal to accept delivery as indicated in the return receipt or in the receipt of such United States Express Mail or courier service.

4.03 HEIRS AND ASSIGNS; TERMINOLOGY.

(a) This Mortgage applies to, inures to the benefit of, and binds Mortgagor and Mortgagee, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Mortgagor" shall include both the original Mortgagor and any subsequent owner or owners of any of the Property. The term "Mortgagee" shall include the owner and holder of the Note, whether or not named as Mortgagee herein.

(b) In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

4.04 SEVERABILITY. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then, Mortgagee may, at its option declare the Secured Indebtedness immediately due and payable.

4.05 APPLICABLE LAW. This Mortgage shall be construed and enforced in accordance with the laws of the State.

4.06 CAPTIONS. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Mortgage, nor in any way affect this Mortgage.

4.07 TIME OF THE ESSENCE. Time shall be of the essence with respect to all of Mortgagor's obligations under this Mortgage and the other Quail 600 Loan Documents.

4.08 NO MERGER. In the event that Mortgagee should become owner of the Property, there shall be no merger of the estate created by this Mortgage with the fee estate in the Property.

4.09 NO MODIFICATIONS. This Mortgage may not be changed, amended or modified, except in a writing expressly intended for such purpose and executed by Mortgagor and Mortgagee.


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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage, or has caused this Mortgage to be executed by its duly authorized representative(s) as of the day and year first written above.


MORTGAGOR:

QUAIL 600 LIMITED PARTNERSHIP, an Alabama limited partnership

By: Daniel Realty Investment Corporation-MB600, an Alabama corporation, its sole general partner

By: 

Jack R. Peterson
Vice President

Attest: 

Sheila D. Ellis
Assistant Secretary

[CORPORATE SEAL]



ACKNOWLEDGEMENT

STATE OF GEORGIA

COUNTY OF FULTON

I, Mattie P. Tatum, a notary public in and for said county in said State, hereby certify that Jack R. Peterson, a Vice President of DANIEL REALTY INVESTMENT CORPORATION-MB600, an Alabama corporation, the sole general partner of Mortgagor, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed as to the contents of the instrument, he, as such Vice President with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as general partner on behalf of Mortgagor.

Given under my hand and seal of office this September 30, 1996.

Mattie P. Tatum
Notary Public
State of Georgia

Commission Expiration:

[Notarial Seal]



EXHIBIT "A"
TO MORTGAGE AND SECURITY AGREEMENT

I. DEFINED TERMS

"County" shall mean Shelby County, Alabama.

The term "Hazardous Substances" shall include without limitation:

(i) Those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.) ("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

(ii) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto):

(iii) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317); (E) flammable explosives; or (F) radioactive materials; and

(iv) The Alabama Hazardous Waste Management Act, the Alabama Solid Waste Act, the Alabama Underground Storage Tank Laws, the Alabama Water Pollution Control Act and the Alabama Air Pollution Control Act of 1971; and

(v) Such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

"Leasing Guidelines" shall mean guidelines, from time to time approved in writing by Mortgagee, for the leasing of all or any part of the Property, but which in any event, unless and until further leasing guidelines are approved by Mortgagee, shall be as follows:

- (a) leases must be in the form of the standard form of lease approved by Mortgagee in writing;
- (b) leases must have an initial term of at least three (3) years but not more than five (5) years;

(c) leases must not demise more than twenty thousand (20,000) square feet of net leasable area, unless otherwise approved by Mortgagee;

(d) leases must have an annual minimum rent payable of at least \$16.00 per square foot of net leasable area;

(e) at the time of entering into any lease there must not currently exist an Event of Default under any of the Quail 600 Loan Documents; and

(f) leases must contain provisions requiring the tenant to pay additional rent for its proportionate part of any increases in taxes, insurance and operating expenses of the Property after the first lease year OR must have an Effective Rental Rate of not less than that required by subparagraph (d) above, increased by an amount equal to that necessary to reflect any increase in taxes, insurance and operating expenses with respect to the Property since the date of this Mortgage, with provisions in the lease for increases in the Effective Rental Rate either (i) commensurate with the Consumer Price Index or like index or (ii) of not less than three percent (3%) per annum.

"Rents and Profits" shall mean all and any income, rents, royalties, revenue, issues, profits, proceeds, accounts receivable and other benefits now or hereafter arising from the Property, or any part thereof.

"Requirements" shall mean all requirements relating to land and building construction, use and maintenance, including, without limitation, planning, zoning, subdivision, environmental, air quality, flood hazard, fire safety, handicapped facilities and other governmental approvals, permits, licenses and/or certificates as may be necessary from time to time to comply with any of the foregoing, and other applicable statutes, rules, orders, regulations, laws, ordinances and covenants, conditions and restrictions, which now or hereafter pertain to and/or affect the design, construction, existence, operation or use and occupancy of the Property, or any part thereof, or any business conducted therein or thereon.

"State" shall mean Alabama, the state in which the Property is located.

II. ADDRESSES

Mortgagor's address:

Quail 600 Limited Partnership
c/o Daniel Corporation
1200 Corporate Drive
Birmingham, Alabama 35242-2940
Attention: Sheila D. Ellis
Assistant Secretary

Mortgagee's address:

Metropolitan Life Insurance Company
One Madison Avenue
New York, New York 10010
Attention: Senior Vice-President
Real Estate Investments

and:

Metropolitan Life Insurance Company
303 Perimeter Center North
Suite 600
Atlanta, Georgia 30346
Attention: Vice-President or
Associate General Counsel

EXHIBIT "B"
TO MORTGAGE AND SECURITY AGREEMENT

PROPERTY DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND lying and being in Shelby County, Alabama, and known as Lot 11B-1, Meadow Brook Corporate Park South Phase II, Resurvey of Lot 11A & Lot 11B, as per plat recorded in Map Book 13, Page 84, in the Probate Office of Shelby County, Alabama, and being more particularly described as follows:

Commence at the point formed by the intersection of the southeastern margin of the right-of-way of Meadow Brook Road with the southwestern margin of the right-of-way of Corporate Parkway (right-of-way width varies) and thence run South 51 degrees 47 minutes 47 seconds East along the southwestern margin of the aforesaid right-of-way of Corporate Parkway a distance of 97.80 feet to a point; thence running in a southeasterly direction along the southwestern margin of the aforesaid right-of-way of Corporate Parkway and along the arc of a curve an arc distance of 323.95 feet to a point, said point being the POINT OF BEGINNING (said arc being subtended by a chord having a bearing of South 79 degrees 09 minutes 10 seconds East and a radius of 339.25 feet); FROM THE POINT OF BEGINNING AS THUS ESTABLISHED, run South 73 degrees 29 minutes 28 seconds East along the southwestern margin of the aforesaid right-of-way of Corporate Parkway a distance of 109.47 feet to a point; thence running in a southeasterly direction along the southwestern margin of the right-of-way of Corporate Parkway and along the arc of a curve an arc distance of 403.50 feet to a point (said arc being subtended by a chord having a bearing of South 80 degrees 14 minutes 14 seconds East and a radius of 440.00 feet); thence running South 53 degrees 58 minutes 00 seconds East along the southwestern margin of the aforesaid right-of-way of Corporate Parkway a distance of 359.44 feet to a point; thence leaving the southwestern margin of the aforesaid right-of-way of Corporate Parkway and running South 36 degrees 39 minutes 53 seconds West a distance of 99.01 feet to a point; thence running South 73 degrees 24 minutes 59 seconds West a distance of 489.96 feet to a point; thence running North 89 degrees 15 minutes 39 seconds West a distance of 50.92 feet to a point; thence running North 23 degrees 15 minutes 35 seconds West a distance of 506.13 feet to the POINT OF BEGINNING; said tract or parcel of land contains 5.62 acres, more or less, and is more particularly described on that certain ALTA/ACSM Land Title Survey prepared by Walter Schoel, Jr., Alabama Registered Engineer and Land Surveyor No. 3092, Walter Schoel Engineering Company, dated September 10, 1996 and last revised September 27, 1996, which survey is incorporated herein by reference thereto.

EXHIBIT "C"
TO MORTGAGE AND SECURITY AGREEMENT

PERMITTED EXCEPTIONS

1. General and special taxes or assessments for 1996 and subsequent years not yet due and payable.
2. Agreement with Alabama Power Company as to underground cables recorded in Real Book 75, page 634 in Probate Office of Shelby County, Alabama, and as shown on the survey.
3. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including rights set out in Deed Book 66, page 34 in aforesaid records.
4. Agreement Alabama Power Company as set out in Misc. Book 48, page 880 aforesaid records, and as shown on the survey.
5. Transmission Line Permit(s) to Alabama Power Company as shown by instrument(s) recorded in Deed Book 146, page 391 aforesaid records and as shown on the survey.
6. Building setback line, buffer zone, sanitary sewer, storm sewer and other public utility easements as set out in Map Book 13, page 84, and as shown on the survey.
7. Declaration of Covenants, Conditions, Restrictions for Meadow Brook Corporate Park South as set out in Real Book 64 page 91, with 1st Amendment in Real 95, page 826, with 2nd Amendment in Real 141, page 784, with 3rd Amendment in Real 177, page 244, with 4th Amendment in Real 243, page 453, with 5th Amendment in Real 245, page 89, with 6th Amendment by Ins. No. 1992-23529, with 7th Amendment by Inst. No. 1995-03028, with 8th Amendment by Inst. No. 1995-04188 and 9th Amendment by Inst. No. 1996-5491 aforesaid records.
8. NOTE: The survey referenced in the items above, is defined as the survey by Walter Schoel Engineering Company Walter Schoel, Jr., Alabama Registered Engineer and Land Surveyor No. 3092, dated September 10, 1996 and last revised September 27, 1996.

EXHIBIT "D"
TO MORTGAGE AND SECURITY AGREEMENT

REQUIREMENTS FOR RESTORATION

Unless otherwise expressly agreed in a writing signed by Mortgagee for such purpose, the Requirements For Restoration shall be as follows:

(a) In the event the Net Insurance Proceeds are to be used for the Restoration, Mortgagor shall, prior to the commencement of any work or services in connection with the Restoration (the "Work"), deliver or furnish to Mortgagee (i) complete plans and specifications for the Work which (A) have been approved by all governmental authorities whose approval is required, (B) bear the signed approval of an architect satisfactory to Mortgagee (the "Architect") and (C) are accompanied by Architect's signed estimate of the total estimated cost of the Work which plans and specifications shall be subject to Mortgagee's prior approval (the "Approved Plans and Specifications"); (ii) the amount of money which, as determined by Mortgagee, will be sufficient when added to the Net Insurance Proceeds, if any, to pay the entire cost of the Restoration (all such money as held by Mortgagee being herein collectively referred to as the "Restoration Funds"); (iii) copies of all permits and approvals 4 required by law in connection with the commencement and conduct of the Work; (iv) a contract for construction executed by Mortgagor and a contractor satisfactory to Mortgagee (the "Contractor") in form, scope and substance satisfactory to Mortgagee (including a provision for retainage) for performance of the Work; and (v) a surety bond for and/or guarantee of payment for and completion of, the Work, which bond or guarantee shall be (A) in form, scope and substance satisfactory to Mortgagee, (B) signed by a surety or sureties, or guarantor or guarantors, as the case may be, who are acceptable to Mortgagee, and (C) in an amount not less than Architect's total estimated cost of completing the Work.

(b) Mortgagor shall not commence any portion of the Work, other than temporary work to protect the Property or prevent interference with business, until Mortgagor shall have complied with the requirements of subparagraph (a) above. After commencing the Work, Mortgagor shall perform or cause Contractor to perform the Work diligently and in good faith in accordance with the Approved Plans and Specifications. So long as there does not currently exist an Event of Default under any of the Quail 600 Loan Documents, Mortgagee shall disburse the Restoration Funds in increments to Mortgagor, from time to time as the Work progresses, to pay (or reimburse Mortgagor for) the costs of the Work, but subject to the following conditions, any of which Mortgagee may waive in its sole discretion:

(i) Architect shall be in charge of the Work;

(ii) Mortgagee shall make such payments directly or through escrow with a title company selected by Mortgagor and approved by Mortgagee, only upon not less than ten (10) days' prior written notice from Mortgagor to Mortgagee and Mortgagor's delivery to Mortgagee of (A) Mortgagor's written request for payment (a "Request for Payment") accompanied by a certificate by Architect in form, scope and substance satisfactory to Mortgagee which states that all of the Work

completed to that date has been done in compliance with the Approved Plans and Specifications and in accordance with all provisions of law, that the amount requested has been paid or is then due and payable and is properly a part of the cost of the Work and that when added to all sums, if any, previously paid out by Mortgagee, the requested amount does not exceed the value of the Work done to the date of such certificate; (B) evidence satisfactory to Mortgagee that there are no mechanic's or similar liens for labor or material supplied in connection with the Work to date or that any such liens have been adequately provided for to Mortgagee's satisfaction; and (C) evidence satisfactory to Mortgagee that the balance of the Restoration Funds remaining after making the payments shall be sufficient to pay the balance of the cost of the Work not completed to date (giving in such reasonable detail as Mortgagee may require an estimate of the cost of such completion). Each Request for Payment shall be accompanied by (x) waivers of liens satisfactory to Mortgagee covering that part of the Work previously paid for, if any, (y) a search prepared by a title company or by other evidence satisfactory to Mortgagee that no mechanic's liens or other liens or instruments for the retention of title in respect of any part of the Work have been filed against the Property and not discharged of record, and (z) an indorsement to Mortgagee's title policy insuring the Mortgagee that no encumbrance exists on or affects the Property other than the Permitted Exceptions;

(iii) No lease affecting the Property immediately prior to the damage or destruction shall have been cancelled, nor contain any still exercisable right to cancel, due to such damage or destruction; and

(iv) Any Request for Payment after the Restoration has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the Improvements legal.

(c) If (i) within sixty (60) days after the occurrence of any damage or destruction to the Property requiring Restoration, Mortgagor fails to submit to Mortgagee and receive Mortgagee's approval of plans and specifications or fails to deposit with Mortgagee the additional amount necessary to accomplish the Restoration as provided in subparagraph (a) above, or (ii) after such plans and specifications are approved by all such governmental authorities and Mortgagee, Mortgagor fails to commence promptly or diligently continue to completion the Restoration, or (iii) subject to Section 1.16 hereof, Mortgagor becomes delinquent in payment to mechanics, materialmen or others for the costs incurred in connection with the Restoration, then, in addition to all of the rights herein set forth and after five (5) days' written notice of the non-fulfillment of one or more of the foregoing conditions, Mortgagee may apply the Restoration Funds then or thereafter held by Mortgagee to reduce the Secured Indebtedness in such order as Mortgagee may determine, and at Mortgagee's option and in its sole discretion, Mortgagee may declare the Secured Indebtedness immediately due and payable.